



U.S. Citizenship
and Immigration
Services

42

FILE:

Office: HARLINGEN, TX

Date: OCT 25 2004

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under sections 309 and 301 of the Immigration and Nationality Act, 8 U.S.C. §§ 1409 and 1401.

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

DISCUSSION: The application was denied by the District Director, Harlingen, Texas, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on January 23, 1962. The applicant's father, [REDACTED] was born in Texas on May 6, 1907, and he was a U.S. citizen. The applicant's mother, [REDACTED] was born in Mexico on April 23, 1926, and she is not a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant seeks a certificate of citizenship pursuant to sections 309 and 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1409 and 1401, based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen father.

The district director concluded that, although the applicant satisfactorily established that his father met the physical presence requirements set forth in section 301 of the former Act, the applicant had nevertheless failed to establish that he was legitimated by his father as required by section 309 of the Act, 8 U.S.C. § 1409. The application was denied accordingly.

On appeal, the applicant asserts that his father acknowledged his birth under oath and that he was legitimated by his father.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). The applicant in the present matter was born in 1962. Section 301(a)(7) of the former Act therefore applies to the present case.

Section 301(a)(7) of the former Act states that the following shall be nationals and citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation

In order to meet the definition of "child" prior to November 14, 1986, section 309 of the former Act required that paternity over a child born out of wedlock be established by legitimation while the child was under twenty-one. Subsequent amendments made to the Act in 1986, provided that a new section 309 would apply

to persons born out of wedlock, who had not attained eighteen years of age as of the November 14, 1986, date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The amendments provided that the former section 309(a) applied to any individual who had attained eighteen years of age as of November 14, 1986, and that former section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. *See section 13 of the INAA, supra. See also section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609.*

In the present matter, the applicant was born prior to November 14, 1986, and he was over the age of eighteen on November 14, 1986. The AAO will therefore assess the applicant's claim pursuant to section 309(a) requirements under the former Act.¹ Accordingly, the applicant must establish that he was legitimated by his father prior to his twenty-first birthday, under the law of the applicant's residence or domicile (Mexico), or under the law of his father's residence or domicile (Texas).

The record contains the applicant's Mexican birth certificate reflecting that the applicant's father is Gregorio Villarreal. The record contains no other documentation or evidence regarding the acknowledgement or legitimation of the applicant by his father. The AAO notes that Mexican Civil Code, articles 3 and 4, provide that official registration and acknowledgment of a child establishes paternity over a child born out of wedlock. The AAO finds however, that pursuant to article 130 of the Mexican Constitution, a child born out of wedlock in Mexico, becomes legitimated only upon the civil marriage of his or her parents. *See Matter of M-D*, 3 I&N Dec. 485 (BIA 1949). *See also, Matter of Hernandez*, 14 I&N Dec. 608 (BIA 1974) and *Matter of Rodriguez-Cruz*, 18 I&N Dec. 72 (BIA 1981). The applicant has failed to establish that his parents legally married prior to his twenty-first birthday. The AAO therefore finds that the applicant was not legitimated by his father pursuant to the laws in Mexico.

The AAO additionally finds that the applicant failed to establish he was legitimated by his father in accordance with legitimation laws in Texas, prior to his twenty-first birthday.

Section 13.21 of the Texas Family Code, in existence prior to the applicant's twenty-first birthday, provided, in pertinent part:

If a statement of paternity has been executed by the father of an illegitimate child, the father . . . may file a petition for a decree designating the father as a parent of the child. The statement of paternity must be attached to the petition.

- (a) The court shall enter a decree designating the child as the legitimate child of its father and the father as a parent of the child if the court finds that:
 - 1) the parent-child relationship between the child and its original mother has not been terminated by a decree of a court;
 - 2) the statement of paternity was executed as provided in this chapter, and the facts stated therein are true; and
 - 3) the mother or the managing conservator, if any, has consented to the decree.

The record in the present case does not contain a court decree indicating that the applicant's father took action to legitimate the applicant under section 13.21 of the Texas Family Code, prior to his twenty-first birthday.

¹ The AAO notes that the district director erroneously applied the provisions of the amended, post November 1986, section 309 to the applicant's case. The error is found to be harmless, as the applicant also failed to meet the definition of a legitimated child under section 309 of the former, pre-November 1986 Act

Accordingly, the AAO finds that the applicant has failed to establish he was legitimated by his father, as required by section 309 of the former Act. He is therefore ineligible to derive citizenship under sections 309 and 301(a)(7) of the former Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.